SUTAN BIN HAJI TAIB v. COLLECTOR OF LAND REVENUE & ANOR.

[O.C.J. (Abdul Hamid J.) September 25, 1974]
[Kuala Lumpur — Originating Motion No. 49 of 1973]

Land Law — Qualified title issued in error — Person failing to comply with request to surrender title for correction — Application to court to have qualified title cancelled and separate qualified title issued — National Land Code, s. 380.

In this case a qualified title had been issued by the Land Office in error. The person to whom the title was issued refused to comply with a request to surrender the title for correction. Thereupon the applicant applied to the High Court for the cancellation of the qualified title and the issue of a separate and distinct title to him.

Held: in the circumstances there was merit in the application and an order will be made that the qualified title issued be cancelled and a separate and distinct qualified title issued.

ORIGINATING MOTION.

Datuk Balwant Singh for the applicant.

A. K. Lee for the second respondent.

Abdul Hamid J.: Before I proceed I feel constrained to observe that there is an error in the notice of appeal in regard to the name of the party appealing.

The applicant Sutan bin Haji Taib by notice of motion has prayed for an order that —

(1) the Qualified Title (M) 7 in respect of Lot No. 1093 situated at Kampong Pasir Malay Reservation in the Mukim of Ulu Klang formerly held under A.A. 8/56 by the second respondent Ibrahim bin Taib be cancelled.

(2) and that the Collector of Land Revenue, Kuala Lumpur be directed to issue a separate and distinct Qualified Title in respect of Lot No. 1093 for A.A. No. 8/56 and A.A. No. 27/55 respectively.

Mr. Manjit Singh a legal assistant in Syarikat Datuk Balwant Singh and Company affirmed an affidavit in support of the application to the effect that there were two separate approved applications (A.A.) in respect of Lot No. 1093 Ulu Klang, Kuala Lumpur, namely, A.A. No. 27/55 and A.A. No. 8/56. A.A. No. 27/55 was issued to the applicant while A.A. No. 8/56 was issued in the name of the second respondent. A qualified title was subsequently issued in respect of the whole of Lot No. 1093 to the second respondent vide Q.T.(M)7. Mr. Manjit Singh also affirmed that Lot No. 1093 consisted of two separate approved applications approximately half an acre each belonging to the applicant and the second respondent. He further stated that the issue of the whole of Lot No. 1093 to the second respondent was the result of an administrative error made by the Collector of Land Revenue. Although the second respondent was asked to surrender the title for rectification he refused to do so.

Raja Sharuddin bin Raja Musa, Assistant Collector of Land Revenue affirmed an affidavit confirming paragraph two and paragraph three of Mr. Manjit Singh's affidavit. He further affirmed that when the qualified title was made to the second respondent, the officer in the Land Office was misled into believing that second respondent was lawfully entitled to the whole land. The mistake became apparent subsequently and the Land Office immediately requested the second respondent to surrender the qualified title issued to him to enable the Land Office to rectify the mistake. The second respondent refused to comply with the request.

The second respondent contended that under section 340 of the National Land Code the title held by him in respect of the land is indefeasible unless there is fraud, forgery or misrepresentation on his part. He denied that he practised fraud in obtaining the issue of qualified title. He further denied that he misled the Land Office into believing that he was entitled to the whole land. The second respondent further contended that if there was any mistake on the part of the Land Office, such mistake was not induced by him and as such could not constitute a ground for setting aside the title.

In the present case, I am satisfied on the affidavit affirmed by Raja Sharuddin that the qualified title was issued in error. As such it is a matter in respect of which section 380 of the National Land Code would apply. Section 380 reads —

"380. (1) Where the Registrar is satisfied —

(a) that any document of title has been registered or issued in the wrong name, or contains any misdescription of land or boundaries, or other error or omission, or

(b) that any memorial or other entry has been made in error on any document of title or other instrument relating to land, or

(c) that any memorial or other entry made on any such document of title or instrument itself contains any error or omission,

he may, subject to sub-sections (2) and (3), make such correction on the document or interest in question as may be appropriate in the circumstances of the case.

(2) The State Commissioner may if he thinks fit direct that, in such cases or class or classes of case as may be specified in the direction, the powers conferred by sub-section (1) shall not be exercisable in respect of land held under Land Office title, or the corresponding form of qualified title, except with his prior approval.

(3) The said powers shall not without his prior approval be exercised so as to affect any plan prepared by or on behalf of the Chief Surveyor.

(4) The Registrar shall maintain for the purposes of this section a book, to be called the 'Correction Note-book', in which he shall record details of all corrections made by him thereunder."

It would seem to me that in such a case the Registrar may make such correction on the document as may be appropriate in the circumstances. As the second respondent refused to comply with the Collector's request to surrender the title for correction, action under section 380 could not therefore be taken. It is my considered view that there was merit in this application and I therefore ordered that the qualified title in respect of Lot No. 1093 issued to the second respondent be cancelled and that the Collector of Land Revenue issue a separate and distinct qualified title in respect of Lot No. 1093 for the area covered under A.A. No. 8/56 and A.A. No. 27/55 respectively and costs.

Order accordingly.

Solicitors: *Datuk Balwant Singh & Co.; A. K. Lee & Co.*